Civil Revision Petition No.18/2005
Vimal Kumar Jain Vs. Mahaveer Pd. Jain

Date of Order ::: 17/10/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. S.K.Gupta, for petitioner (defendant).
Mr.J.P.Goyal, for respondent (plaintiff).

This is defendants' revision petition filed against Order dt04/12/04 passed by Civil Judge (Jr.Dn.) Mahuwa (Dausa) in civil suit No.09/2004, while rejecting his application moved U/O 7 R.11, CPC, holding that suit is cognizable by civil court.

Defendant-petitioner & plaintiff (respondent) both are real brothers. Plaintiff filed suit before Civil Judge (Jr.Dn.) Mahuwa questioning validity of "Wills" dt.27/11/84 & 24/07/86, whereby testator (father of parties) executed in favour of defendant. In suit the Wills are sought to be declared as non-est and void, and thereby holding him entitled for half share in the property in dispute being one of his successors. The Wills pertained to agricultural land as also two dwelling house etc. In suit, permanent injunction against defendant has also been prayed not to alienate and/or transfer suit property pendente lis.

Defendant got his name mutated in revenue records pertaining to agricultural land on the basis of Will allegedly executed in favour of legatee-defendant by the testator (their father). Earlier plaintiff (respondent) filed suit before revenue court (Asstt. City Magistrate, Mahuwa) for cancellation of mutation made in favour of defendant in succession and further prayed that he be held entitled to half share in

agricultural land being co-successor; but at that point of time, no prayer was made regarding validity of the Will dt.27/11/84 and 27/07/86 which are under challenge in the instant suit. In revenue suit, the defendant pointed out in his written statement that mutation has been made on the basis of will executed in his favour by their father and the Revenue Court has no jurisdiction to examine validity of the Wills; and thus he raised an objection that the prayer which plaintiff has made for seeking half of his share in agricultural holdings, is triable only by civil court and very remedy sought before revenue court, is without jurisdiction and has no competence to entertain such dispute. However, without examining merits of claim of either parties, revenue suit was dismissed by the A.C.M.Mahuwa vide Order dt.24/08/95 U/O 9 R.8, CPC.

Thereafter instant civil suit has been filed before civil court seeking declaration and permanent injunction, referred to (supra). At that stage, defendant again moved an application U/O 7 R.11, CPC, with the prayer that civil court has no jurisdiction to entertain such suit since primary relief claimed for is in respect of declaration of khatedari rights in agricultural holdings and as such, it is only revenue courts which have jurisdiction to examine the same. After taking note of material on record and objection raised by either side, the Trial Court rejected defendant's application with costs of Rs.300/- vide order impugned dt.04/12/04. Hence this revision petition.

Shri S.K.Gupta, Counsel for petitioner has urged that primary relief claimed for by plaintiff is

for declaration of Khatedari rights in agricultural holdings and seeking mutation whereof on half share of suit land, and other reliefs claimed are ancillary, in such circumstances, civil court has no jurisdiction to examine the same as it is barred by S.207 of Rajasthan Tenancy Act, 1955 ("***Tenancy Act***") so also by O.7 R.11 (d), CPC, because the dispute falls within Items 3 & 5 of Schedule III of the Tenancy Act. In support of his contentions, Shri Gupta placed reliance upon decisions of this Court (1) in ***Sukhpal Singh Vs. State of Rajasthan (1998 RRD 478) (2) Bhanwar Singh Vs. Mst.Rammo (1998 WLC Raj.392) & (3) Motilal Vs. Jagdish Pd. (2000(UC) WLC(Raj) 530).***

Contrarily Shri J.P.Goyal, Counsel for respondent contends that suit has been filed questioning validity of impugned Wills besides seeking declaration holding it be non est and void, and further claiming half share in the suit property including agricultural holdings as one of its successors. According to Shri Goyal, validity of Wills is a primary relief claimed for by plaintiff, which can only be weighed by civil court having exclusive jurisdiction and other relief claimed for are ancillary arising out of Wills which are said to have been executed by father of plaintiff and which has been made a basis for getting name mutated in revenue records in the suit land.

Shri Goyal also contended that while determining jurisdiction of civil suit, allegations made in the plaint and pleadings on record is relevant

and it is not depended upon defence taken by defendant. He relied upon decision of Apex Court in ***Abdulla Bin Ali Vs. Galappa (AIR 1985 SC 577).*** He also contended that when suit was before revenue court with regard to partition and possession over half of agricultural holdings in question, validity of Wills was not under challenge, and upon objection raised by defendant, revenue suit was dismissed vide order dt.24/08/95 U/O 9 R.8 CPC, and thereafter instant suit has been filed questioning validity of Wills so also claiming for ancillary reliefs arising out of Wills in question; as such objection by filing application U/O 7 R.11, CPC, is only a feeble attempt to defer and not to get adjudication of dispute by one way or the other.

I have considered rival contentions of both the parties and with their assistance, perused findings recorded by trial Court in the Order impugned & assailed in this revision petition.

S.207(1) of the Tenancy Act provides that all suits and applications of the nature specified in Items 3 & 5 of Schedule to the Act, shall be heard and determined by a revenue court.

In instant case, the trial Court recorded categorical finding that from the prayer made by plaintiff in the plaint, primarily validity of impugned Wills are under challenge while seeking declaration for holding it to be non est and void, and which has been made a basis by defendant in getting his name mutated in revenue record, and so also claiming half share to the suit property being a successor; and thus other reliefs claimed for are ancillary arising out of the

Wills in question.

The petitioner laid much emphasis that suit for division & declaration of Khatedari rights of agricultural holdings, is triable only by revenue court.

The judgments on which the Counsel for petitioner placed reliance, are distinguishable on facts. In ***Bhanwar Singh Vs. Mst. Rammo (supra)***, suit was filed primarily with the relief to seek declaration of tenancy rights as Khatedar to the extent of 1/3rd and so also partition of agricultural holdings. The defendant has set up the case based on gift deeds in their defence but no relief was prayed for by plaintiff seeking declaration of gift deed to be non-est and void and as such it was held that suit was triable by revenue Court only. In ***Sukhpal Singh Vs. State (supra)***, the plaintiff filed suit for declaration that he is entitled for 1/3rd share in the land and for partition, mutation and possession; and this Court in para 25 observed that the jurisdiction of the civil court is not concurrent with that of revenue court in a matter of this nature and the facts & circumstances of each case have to e considered of its own. It was the case where the Board of Revenue rejected the revision filed by defendant petitioner against order of revenue appellate authority passed on his application U/O 7 R.11 CPC in the suit pending before the said authority. This Court observed as under : -

> "Moreover this petition has arisen only against an order passed on the application filed by petitioner defendant under Order 7 Rule 11 CPC and it is settled law that such

> an application cannot be entertained and allowed where the validity of a particular document is under challenge."

Hence the cases referred to by Counsel for petitioner are distinguishable and do not render any assistance to the petitioner.

In ***Lal Singh Vs. Tejsingh (AIR 1972 Raj.137)***, sale deed was questioned in the suit on three good grounds (1) that it was without consideration and was executed without obtaining the permission of the Court as required by S.8(2) of Hindu Minority & Guardianship Act and last ground was that the sale was notfor benefit of minors or their estate. This Court observed as under : -

> "... If a sale deed is voidable then it is necessary to get it cancelled before one can be entitled to the property disposed of by it. The relief of cancellation of a sale deed or a decree can only be granted by a civil court and not by revenue court. The suit therefore lies in the civil court."

In ***Rattu Vs. Mala (1968 RLW 375),*** it was disputed that suit in respect of non-agricultural property could only be instituted in the civil court because there was one cause of action to the plaintiff both in respect of agricultural as well as non-agricultural properties so he could not have brought two suit. Hence this Court held as under : -

> "...One suit in respect of both these properties could only be instituted in the civil court. A temporary injunction in such a suit can only be granted by the civil court in which suit is instituted. The provision contained in S.242 of the Rajasthan Tenancy Act goes to show that the Legislature

> contemplated that a composite suit shall be instituted in the civil court which shall frame an issue on the pleas of tenancy in respect of agricultural land and remit it for decision to the appropriate revenue court."

In ***Shyam Kumar Vs. Budh Singh (1977 RLW 131), an argument that*** as relief for permanent injunction can be granted by revenue court, other relief or cancellation of sale deeds can be granted by revenue court which alone has jurisdiction, was held as fallacious by this Court observing as under : -

> "... The explanation presupposes that the cause of action is one in respect of which relief might be granted by revenue court. Now in the present case, as I have said before, the relief and the main relief is the cancellation of the said sale deeds. Unless the said ale deeds are cancelled no other relief can be given by the court. The cause of action in the present case is the execution of the sale deeds by defendant No.4 purporting to act as a special attorney of the plaintiff. It is the cause of action which has forced the plaintiffs to file the suit; the relief therefore that is mainly sought is a relief of cancellation of the sale deeds, and such a relief cannot obviously be given by a revenue court but can only be given by the civil court. It is patent that the explanation to section 207 is not applicable. The relief of perpetual injunction and other are incidental to the main relief, and will follow as a consequence to the finding of the court with regard to the relief of cancellation of the sale deeds or otherwise."

In ***Abdulla Bin Ali Vs. Galappa (supra),*** plaintiff had filed the suit treating defendants as

trespassers as they denied title of the plaintiff. The Apex Court held that the allegations made in the plaint decide the forum and the jurisdiction does not depend upon the defence taken by the defendants in written statement. On a reading of the plaint as a whole, the Apex Court held that a suit against the trespasser would lie only in the civil court and not in the revenue court.

In view of what has been laid down in aforesaid decisions, it is well settled that question of jurisdiction whether suit is exclusively triable by civil court or revenue court, has to be decided on averments made in the plaint, because it is the substance of plaint and true nature of the suit that is to be seen to determine question of jurisdiction. If in substance, relief claimed is one which the civil court is entitled to give being within its exclusive jurisdiction, then jurisdiction of revenue courts will be ousted even though it may require revenue Court to incidentally determine some ancillary facts.

In the present case, while examining substance of the plaint, plaintiff's case is virtually for a declaration of Wills to be non-est and void and further ancillary relief is claimed for declaration claiming half share in suit property referred to in the Wills including agricultural land in question also. In this view of matter, trial Court has not committed any error of jurisdiction in holding that primarily relief claimed for is questioning validity of Wills and declaration can only be granted by civil court and not by revenue courts, unless those Wills are declared non-est and void, no other ancillary relief as claimed for

in the suit can be granted by other court competent to adjudicate upon. The plaintiff primarily has questioned the validity of execution of Wills by its testator in favour of defendant, for which in my considered opinion, relief can exclusively be granted by a Civil court only and I find that explanation to S.207 read with Items 3 & 5 of Schedule III to the Tenancy Act are not applicable in facts situation of instant case.

I find no infirmity in the findings recorded by the Trial Judge in this regard while rejecting application of defendant petitioner filed U/O 7 R.11, CPC.

Consequently, the revision petition fails and is hereby dismissed, alongwith Stay Petition No.314/05. There shall be no order as to costs.

(Ajay Rastogi), J.

K.Khatri/18CR2005.